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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,052	12/30/2003	Brian Alan Grove	2043.036US1	9104
21186	7590	08/02/2006	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			GARG, YOGESH C	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 08/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/750,052

Applicant(s)

GROVE ET AL.

Examiner

Yogesh C. Garg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-131 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-131 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-11, 37-47, 73-83 and 109-112 drawn to a network based commerce system including a processor coupled to a memory to cause and adjust a fixed price offer associated with a listed item during an auction, classified in class 705, subclass 26 (see independent claims 1,37 and 73).
 - II. Claims 12-14, 48-50, 84-86 and 113-115 drawn to a network based commerce system including a processor coupled to a memory to cause to publish a buyer proposal price in connection with a listing for an item during auction, classified in class 705, subclass 26 (see independent claims 12,48 and 84).
 - III. Claims 15-22,51-58, 87-94 and 116-119 drawn to a network based commerce system including a processor coupled to a memory to cause to adjust a reserve price associated with a listing of an item during auction, classified in class 705, subclass 26 (see independent claims 15,51, and 87).
 - IV. Claims 23-26, 59-62, 95-98 and 120-23 drawn to a network based commerce system including a processor coupled to a memory to facilitate a request for an adjustment of a reserve price associated with a listing of an item, the request to be sent to a seller of the listing, classified in class 705, subclass 26 (see independent claims 23, 59, and 95).
 - V. Claims 27-30, 63-66, 99-102 and 124-127 drawn to a network based commerce system including a processor coupled to a memory to facilitate a request for an adjustment of a fixed price offer associated with a listing of an item, the request

to be sent to a seller of the listing, classified in class 705, subclass 26 (see independent claims 27, 63 and 99).

- VI. Claims 31-32, 67-68, 103-104 and 128-131 drawn to a network based commerce system including a processor coupled to a memory to automatically designate a bidder to be a winner of a listing for an item upon adjusting a fixed price offer, classified in class 705, subclass 26 (see independent claims 31, 67, and 103).
- VII. Claims 33-34, 69-70, and 105-106 drawn to a network based commerce system including a processor coupled to a memory to automatically designate a bidder to be a winner of a listing for an item upon adjusting a predefined reserve price, classified in class 705, subclass 26 (see independent claims 33, 69 and 105).
- VIII. Claims 35-36, 71-72 and 107-108 drawn to a network based commerce system including a processor coupled to a memory to automatically notify automatically a relevant party when a proxy bid and a reserve price are within a predetermined proximity of each other, classified in class 705, subclass 26 (see independent claims 35, 71 and 107).

The inventions are distinct, each from the other because of the following reasons:

- 2. Inventions I through VII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as adjusting a fixed price offer associated with a listed item during an auction, not required by the other groups, subcombination II has a separate utility such as to cause to publish a buyer proposal price in connection with a listing for an item during auction, not required by the other groups, subcombination III has a separate utility such as to cause to adjust a reserve price associated

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with a listing of an item during auction not required by other groups, subcombination IV has a separate utility such as to facilitate a request for an adjustment of a reserve price associated with a listing of an item, the request to be sent to a seller of the listing not required by other groups, subcombination V has a separate utility such as to facilitate a request for an adjustment of a fixed price offer associated with a listing of an item not required by other groups, subcombination VI has a separate utility such as to automatically designate a bidder to be a winner of a listing for an item upon adjusting a fixed price offer not required by the other groups, subcombination VII has a separate utility such as to automatically designate a bidder to be a winner of a listing for an item upon adjusting a predefined reserve price not required by other groups and subcombination VIII has a separate utility such as to automatically notify automatically a relevant party when a proxy bid and a reserve price are within a predetermined proximity of each other not required by other groups. See MPEP § 806.05(d).

3. Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

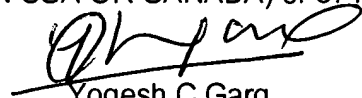
Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C. Garg whose telephone number is 571-272-6756. The examiner can normally be reached on Increased Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Yogesh C Garg
Primary Examiner
Art Unit 3625

YCG
7/26/2006